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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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Cung Le, Nathan Quarry, Jon Fitch, Brandon
Vera, Luis Javier Vazquez, and Kyle
Kingsbury, on behalf of themselves and all
others similarly situated,

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Plaintiffs,

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v.

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Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

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Defendant.

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Case No.: 2:15-cv-01045-RFB-(PAL)

**JOINT PROPOSED AGENDA FOR
JUNE 1, 2017 STATUS CONFERENCE**

1 The parties in the above-captioned matter have met and conferred regarding the Hearing
 2 on Plaintiffs' Emergency Motion for Extension of Discovery Deadline and Case Management
 3 Schedule (ECF No. 363) and Request for a Status Conference (ECF No. 393). Because
 4 intervening developments have resulted in certain changes to the status of matters or events
 5 reflected in the parties' submissions, for the Court's convenience, the parties have prepared the
 6 following statement to reflect the current status and respectfully propose, in addition to any
 7 matters that the Court wishes to address, the following agenda of unresolved discovery related
 8 issues for the Court's consideration at the June 1, 2017 hearing and status conference. (ECF No.
 9 394).

10 **I. Discussion of Pending Motions**

11 a. **Plaintiffs' Emergency Motion for Extension of Discovery Deadline and Case**
 12 **Management Schedule**, ECF No. 363, filed March 21, 2017.

Plaintiffs' Position (ECF No. 363)	Zuffa's Position (ECF No. 401 at 1-2)¹
<p>14 Plaintiffs request an additional 60 days of fact discovery from the date of the entry of the Court's Order with a corresponding 60-day extension for all remaining case management deadlines.</p> <p>17 Plaintiffs do not believe that they should be limited to pursuing discovery items already in progress during any extended discovery period.</p>	<p>14 Defendant proposes a 45-day extension of the original fact discovery deadline to June 15, 2017.</p> <p>17 Defendant opposes the service of new written discovery and additional depositions subject to the following exceptions:</p> <p>21 Defendant proposes that the extended fact discovery period may only be used to: resolve disputes related to the parties' written discovery responses and document productions; and complete the depositions of 5 former and current Zuffa employees,² Plaintiffs' 30(b)(6) depositions of Zuffa and WME-IMG, and the deposition of third-party witness Scott Coker.</p>

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 27 ¹ May 10, 2017 letter from Stacey K. Grigsby to the Honorable Peggy A. Leen responding to Plaintiffs' May 5, 2017 letter from Don Springmeyer to the Honorable Peggy A. Leen (ECF No. 393).

28 ² Dana White, Kirk Hendrick, Ike Lawrence Epstein, Joe Silva, and Michael Mersch.

1 **b. Plaintiffs' Motion to Challenge Work Product Designation**, ECF No. 282, filed
 2 August 31, 2016 ("Work Product Motion"). The Work Product Motion is fully briefed. Plaintiffs
 3 are challenging work product designations for three documents relating to a fighter compensation
 4 study. Zuffa opposes Plaintiffs' motion, and has withheld documents that it believes are protected
 5 by the work product doctrine. Since the September 27, 2016 hearing, there has been no change in
 6 the parties' positions.

7 **c. Motions to Quash Subpoenas**, Case No. 2:17-cv-849-RFB-GWF (relating to
 8 subpoena to Non-Party Bellator Sport Worldwide (transferred from Central District of
 9 California)), and Case No. 3:17-mc-27 (N.D. Tex.) (relating to deposition subpoena of Mark
 10 Cuban (Plaintiffs are seeking to transfer dispute to the District of Nevada)).

11 *i.* Third party Bellator moved to quash Plaintiffs' and Zuffa's subpoenas
 12 *duces tecum* as to Bellator's financial information (sought by Plaintiffs'
 13 subpoena and in a motion to compel) and fighter contracts (sought by
 14 Zuffa's subpoena). The motion is fully briefed.

15 *ii.* Third party AXS TV, LLC moved to quash Plaintiffs' and Zuffa's
 16 deposition subpoenas to Mark Cuban, CEO, Chairman and President of
 17 AXS TV, LLC. Plaintiffs filed their opposition on May 8. AXS's reply was
 18 filed May 22. The motion is fully briefed.

19 **d. Plaintiffs' Motion to Compel Defendant to Produce a Log of Communications
 20 for Dana White's Discoverable Telephone Numbers and Electronic Communication Devices
 21 and Directing Defendant to Submit an Inventory of Electronic Communication Devices**,
 22 ECF Nos. 395-398, filed May 9, 2017. The motion is fully briefed as of May 31, 2017.

23 **e. Plaintiffs' Motion to Compel Production of Documents from Third Party
 24 Zinkin Entertainment, LLC**, Case No. 1:17 at 359, (E.D. Cal.) (relating to document subpoena
 25 served on Zinkin Entertainment, LLC). Plaintiffs moved to compel compliance with their
 26 subpoena *duces tecum* to third party fighter agent Zinkin Entertainment, LLC, served on
 27 December 12, 2015. No hearing has been scheduled pending filing of Zinkin's portion of the joint
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1 stipulation.

2 **II. Pending Discovery**

3 **a. Depositions.**

4 **i. Zuffa Current and Former Employees.** Plaintiffs have noticed and the
 5 parties are attempting to schedule depositions of one current Zuffa employee—Dana White—and
 6 three former Zuffa employees—Joe Silva, Michael Mersch, and Kirk Hendrick. Defendant has
 7 not objected to Plaintiffs taking these depositions after the close of discovery under the operative
 8 Scheduling Order. However, Plaintiffs seek to extend the duration of each of these depositions to
 9 up to 14 hours of testimony for each deponent. In addition, another Zuffa employee, Mr.
 10 Lawrence Epstein, was deposed for seven hours on May 26, 2017. Plaintiffs are seeking an
 11 additional seven hours with him as well. Defendant opposes Plaintiffs' request to double the
 12 duration of all of these depositions. The parties also have a potential dispute about the appropriate
 13 date for the deposition of Mr. Mersch.

14 **ii. Rule 30(b)(6) Deposition of Zuffa Designees.** Plaintiffs have noticed
 15 additional topics relating to fighter compensation, financial data and databases, and Zuffa's
 16 valuations. The parties previously agreed to defer all such topics until resolution of Plaintiffs'
 17 Motion to Challenge Work Product Designation, ECF No. 282, to conserve the parties' resources.
 18 Accordingly, this deposition cannot go forward until the Work Product Motion is resolved.

19 **iii. Custodian of Records.** Plaintiffs have sought and Zuffa has agreed to
 20 produce a custodian of records for deposition on a date yet to be scheduled. The parties have a
 21 potential dispute about the breadth of topics to be addressed at this deposition. The parties are
 22 continuing to meet and confer regarding the scope of the deposition, which has yet to be
 23 scheduled.

24 **iv. Third parties.** Plaintiffs subpoenaed third parties during the discovery
 25 period that were unavailable for deposition before the discovery deadline. Zuffa does not object to
 26 Plaintiffs' depositions of WME|IMG and Scott Coker (the current CEO of Bellator)
 27 ("Uncontested Third-Party Depositions"). Mr. Coker's deposition has been taken off calendar
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1 pending resolution of Bellator's motion to quash. *See* Section I(c). However, Defendant objects to
 2 Plaintiffs' efforts to conduct the following third-party depositions ("Contested Third-Party
 3 Depositions") after the close of discovery under the operative Scheduling Order:

- 4 1. The Raine Group;
- 5 2. Andrew Simon, AXS;
- 6 3. Mark Cuban, AXS;
- 7 4. Robert "Bob" Meyrowitz, SEG (former owner of UFC);
- 8 5. Louis J. DiBella, DiBella Entertainment, Inc., Boxing Promoter
- 9 6. Robert "Bob" Arum, Top Rank, Inc., Boxing Promoter;
- 10 7. Kathryn Duva, Main Events Productions, L.L.C., Boxing Promoter;
- 11 8. Leon Margueles, Warriors Boxing and Promotions, LLC, Boxing
 Promoter;
- 12 9. Gary Shaw, Boxing Promoter; and
- 13 10. Moody's Investor Service, Inc.

15 **b. Rule 45 Subpoenas**

16 Plaintiffs served the following third parties with subpoenas *duces tecum* and are
 17 continuing to negotiate responsive document productions:

- 18 1. Golden Boy Promotions, LLC;
- 19 2. Golden Boy Promotions, Inc.;
- 20 3. Haymon Sports LLC;
- 21 4. Haymon Holdings LLC;
- 22 5. One Championship, c/o Matt Hume;
- 23 6. King of the Cage Inc.;
- 24 7. The Topps Company, Inc.;
- 25 8. Reebok International Limited;
- 26 9. Jakks Pacific, Inc.;
- 27 10. Getty Images, Inc.;

1 11. Louis J. Dibella, Dibella Entertainment, Inc., Boxing Promoter;
 2 12. Robert “Bob” Arum, Top Rank, Inc., Boxing Promoter;
 3 13. Kathryn Duva, Main Events Productions, L.L.C., Boxing Promoter;
 4 14. Leon Margueles, Warriors Boxing and Promotions, LLC, Boxing
 5 Promoter;
 6 15. Gary Shaw, Boxing Promoter;
 7 16. Legacy Fighting Alliance (Formerly Resurrection Fighting
 8 Alliance); and
 9 17. Ed Soares, Agent.

10 Defendant objects to continued discovery from third parties outside the discovery period
 11 to the extent Plaintiffs have not either (1) filed a motion to compel within the discovery period, or
 12 (2) reached an agreement with the third party during the discovery period pursuant to which the
 13 third party has agreed to provide documents outside the discovery period.

14 **c. Interrogatories.** The parties disagree as to whether the Court increased the
 15 number of interrogatories Plaintiffs were permitted to propound on Defendant, but this potential
 16 dispute may be resolved pursuant to ongoing discussions between the parties. Defendant served
 17 objections without substantive responses to Plaintiffs’ 26th through 31st interrogatories on May
 18 12, 2017. The parties will meet and confer regarding Zuffa’s responses.

19 **d. Document Productions.**

20 **i.** Plaintiffs have raised several issues regarding the identification,
 21 preservation, collection and production of text messages from Zuffa custodians Dana White and
 22 Michael Mersch. Zuffa is investigating the issues raised by Plaintiffs concerning Dana White, and
 23 produced additional text messages on May 26, 2017. Zuffa has responded to Plaintiffs’ questions
 24 concerning its preservation, collection, and production of text messages from Michael Mersch
 25 and has informed Plaintiffs that it does not anticipate producing any additional ESI from this
 26 custodian that is under Zuffa’s custody or control. Plaintiffs have served a subpoena on Mr.
 27 Mersch seeking all Zuffa documents in Mr. Mersch’s possession. Defendant objects to the scope
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1 of the document subpoena.

2 ii. Plaintiffs have requested from Zuffa the documents relating to the Mercer
 3 study. Defendant has asserted that these documents are protected by the work product doctrine. If
 4 this Court disagrees with Defendant's work product designation, Defendant will produce them
 5 shortly after the resolution of Plaintiffs' Motion to Challenge Work Product Designation, ECF
 6 No. 282. If the Court orders the production of some or all of these documents, the parties have
 7 agreed to move forward with a Rule 30(b)(6) deposition relating to fighter compensation,
 8 financial data and databases, and Zuffa's valuations. Moreover, the parties have also agreed, and
 9 the Court has ordered, that the date for serving class and merits expert reports will be no earlier
 10 than thirty days after the Court orders the production of the Mercer documents, if it does so order.

11 iii. Plaintiffs served a former Zuffa employee, John Hertig, with a subpoena
 12 for documents on April 13. Defendant objects to the subpoena of Mr. Hertig.

13 e. **New Discovery.** Plaintiffs contend that they have identified new evidence through
 14 depositions and, as a result, seek to take the following additional third party discovery. Defendant
 15 opposes the following third party discovery on the ground that these requests are untimely.

16 • **January Capital/Mubadala** (former 10% owner of Zuffa). Plaintiffs will
 17 seek to depose Mubadala personnel and request documents from Mubadala that are under Zuffa's
 18 control. Plaintiffs claim that Zuffa has recently represented that Mubadala was an agent of Zuffa
 19 as well as an owner. Defendant contends that Mubadala is an agent of January Capital, a former
 20 10% owner of Zuffa and that Plaintiffs should have been aware of the relationship between Zuffa
 21 and January Capital³ near the outset of this case in light of early disclosures made by Zuffa.

22 • **Showtime Networks.** Plaintiffs will seek to depose certain Showtime
 23 employees and to propound a subpoena to Showtime. Defendant states that Plaintiffs have had
 24 pertinent information relating to Showtime since July 2016.

25 • **Vinci Partners** (Brazilian Investment Firm). Vinci drafted a report that

26 ³ January Capital purchased a 10% interest in Zuffa in December 2009. January Capital is owned
 27 by Flash Entertainment. The investment in Zuffa was managed by Mubadala on behalf of Flash
 28 Entertainment. Following the sale of Zuffa to WME/IMG in July of 2016, January Capital no
 longer holds an ownership interest in Zuffa.

1 Plaintiffs believe contain material statements relevant to this case. Plaintiffs will seek documents
2 from Vinci and seek to depose its personnel. Defendant disputes the relevance of any information
3 that could come from this deposition and states that Plaintiffs have had relevant information
4 relating to the basis for this deposition since September 2016.

5 • **Malki Kawa** (MMA agent). Plaintiffs believe recent deposition testimony
6 from a Zuffa executive contained new material statements regarding contract negotiations,
7 previously unknown to Plaintiffs, between Malki Kawa and Zuffa regarding a potential class
8 member. The Zuffa executive did not recall what he meant by statements he made during those
9 negotiations. Plaintiffs will seek to depose Mr. Kawa. Defendant states that the statements
10 Plaintiffs would like to probe are from Mr. Kawa and produced to Plaintiffs in July 2016, if not
11 earlier.

12 Zuffa takes no position on whether Plaintiffs should be permitted to take additional
13 discovery of the following third party:

14 • **One Championship** (third party MMA promoter). On May 10, Plaintiffs
15 received documents that One Championship produced to Zuffa, including a declaration by One
16 Championship Vice President of Operations and Competition Matt Hume. Plaintiffs will seek to
17 depose Mr. Hume regarding statements made in his declaration.

18 **III. Expert Discovery.** Under the current schedule, Plaintiffs' class and expert merits
19 reports are due on July 31, 2017 or 30 days after the Court rules on the Work Product Motion,
20 whichever comes later. Plaintiffs seek to have their initial expert disclosure deadline to begin no
21 earlier than 30 days after the Court sets for the close of any additional fact discovery. Zuffa
22 opposes Plaintiffs' request.

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2 Dated: May 31, 2017

Respectfully Submitted,

3 By: /s/ Michael Dell'Angelo
4 Michael Dell'Angelo

5 Eric L. Cramer
6 Michael Dell'Angelo
7 Patrick F. Madden
8 BERGER & MONTAGUE, P.C.
9 1622 Locust Street
10 Philadelphia, PA 19103
11 Telephone: (215) 875-3000
12 Facsimile: (215) 875-4604
13 ecramer@bm.net
14 mdellangelo@bm.net
15 pmadden@bm.net

16 Joseph R. Saveri
17 Joshua P. Davis
18 Matthew S. Weiler
19 Kevin E. Rayhill
JOSEPH SAVERI LAW FIRM, INC.
555 Montgomery Street, Suite 1210
San Francisco, California 94111
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
jsaveri@saverilawfirm.com
jdavis@saverilawfirm.com
mweiler@saverilawfirm.com
krayhill@saverilawfirm.com

20 Benjamin D. Brown
21 Richard A. Koffman
22 Daniel Silverman
COHEN MILSTEIN SELLERS & TOLL,
23 PLLC
1100 New York Ave., N.W., Suite 500, East
Tower Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408 4699
bbrown@cohenmilstein.com
rkoffman@cohenmilstein.com
dsilverman@cohenmilstein.com

24
25 *Co-Lead Class Counsel and Attorneys for*
26 *Individual and Representative Plaintiffs Cung*
27 *Le, Nathan Quarry, Jon Fitch, Luis Javier*
Vazquez, Brandon Vera, and Kyle Kingsbury

1 Don Springmeyer (Nevada Bar No. 1021)
2 Bradley S. Schrager (Nevada Bar No. 10217)
3 Justin C. Jones (Nevada Bar No. 8519)
4 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
5 RABKIN, LLP
6 3556 E. Russell Road, Second Floor
7 Las Vegas, Nevada 89120
8 (702) 341-5200/Fax: (702) 341-5300
9 dspringmeyer@wrslawyers.com
bschrager@wrslawyers.com
jjones@wrslawyers.com

7 *Liaison Counsel and Attorneys for Individual*
8 *and Representative Plaintiffs Cung Le, Nathan*
9 *Quarry, Jon Fitch, Luis Javier Vazquez,*
10 *Brandon Vera, and Kyle Kingsbury*

11 Robert C. Maysey
12 Jerome K. Elwell
13 WARNER ANGLE HALLAM JACKSON &
14 FORMANEK PLC
15 2555 E. Camelback Road, Suite 800
16 Phoenix, AZ 85016
17 Telephone: (602) 264-7101
18 Facsimile: (602) 234-0419
19 rmaysey@warnerangle.com
jelwell@warnerangle.com

20 Eugene A. Spector
21 Jeffrey J. Corrigan
22 William G. Caldes
23 SPECTOR ROSEMAN KODROFF &
24 WILLIS, P.C.
25 1818 Market Street – Suite 2500
26 Philadelphia, PA 19103
27 Telephone: (215) 496-0300
28 Facsimile: (215) 496-6611
espector@srgw-law.com
jcorrigan@srgw-law.com
bcaldes@srgw-law.com

Frederick S. Schwartz
LAW OFFICE OF FREDERICK S.
SCHWARTZ
15303 Ventura Boulevard, #1040
Sherman Oaks, CA 91403
Telephone: (818) 986-2407
Facsimile: (818) 995-4124
fred@fredschwartzlaw.com

Additional Class Counsel and Attorneys for Individual and Representative Plaintiffs Cung Le, Nathan Quarry, Jon Fitch, Luis Javier Vazquez, Brandon Vera, and Kyle Kingsbury

Dated: May 31, 2017

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Stacey K. Grigsby
Stacey K. Grigsby

*Attorneys for Defendant Zuffa, LLC, d/b/a
Ultimate Fighting Championship and UFC*

William A. Isaacson (*Pro Hac Vice*)
Nicholas A. Widnell (*Pro Hac Vice*)
Stacey K. Grigsby (*Pro Hac Vice*)
BOIES SCHILLER FLEXNER LLP
1401 New York Avenue, NW
Washington, DC 20005
Tel: (202) 237-2727
Fax: (202) 237-6131
Email: wisaacson@bsfllp.com
nwidnell@bsfllp.com
sgrigsby@bsfllp.com

Donald J. Campbell #1216
J. Colby Williams #5549
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
Email: djc@campbellandwilliams.com
 [jcw@campbellandwilliams.com](mailto: jcw@campbellandwilliams.com)

Richard J. Pocker #3568
BOIES SCHILLER FLEXNER LLP
300 South Fourth Street, Suite 800
Las Vegas, NV 89101
Tel: (702) 382 7300
Fax: (702) 382 2755
Email: rponce@bsfllp.com

*Attorneys for Defendant Zuffa, LLC, d/b/a
Ultimate Fighting Championship and UFC*

ATTESTATION OF FILER

The signatories to this document are Michael Dell'Angelo and Stacey K. Grigsby, and I have obtained Stacey K. Grigsby's concurrence to file this document on her behalf.

Dated: May 31, 2017

By: /s/ Michael Dell'Angelo

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **JOINT PROPOSED AGENDA FOR JUNE 1, 2017 STATUS CONFERENCE** was served on May 31, 2017 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Michael Dell'Angelo